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E.O. 12958: N/A
TAGS: [KIPR](#) [ECON](#) [CH](#) [HK](#)
SUBJECT: IPR ENFORCEMENT WORKSHOP - "CREATING A STRONGER
DETERRENT" HELD IN HONG KONG, MAY 15-16 2006

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11. (SBU) Summary: Post hosted a successful intellectual property rights (IPR) enforcement workshop titled, "Creating A Stronger Deterrent," on May 15-16, 2006. Participants were particularly interested in the Hong Kong Government's (HKG) experiences in combating online piracy and in the discussion on how to establish deterrent sentencing, with one Thai participant saying that Thailand was interested in possibly revising its sentencing guidelines as a result of the workshop. Participants and panel members included law enforcement officials and judges from mainland China, the Hong Kong Government (HKG), Macau, Malaysia, Singapore, Vietnam, Japan, the Philippines, Indonesia, and the United States. The Hong Kong Customs and Excise Department (CED) strongly supported the workshop with opening remarks from CED Commissioner Timothy Tong, a comprehensive presentation about IPR enforcement in Hong Kong, and a tour of their advanced anti-internet piracy lab on the second day of the workshop. Conference participants were able to discuss and share information on best practices for establishing deterrent sentencing and on the latest developments in online IPR protection. End Summary.

Positive Feedback from Participants

12. (SBU) Participants in the workshop found the Hong Kong Government's (HKG) experiences in combating online piracy to be particularly valuable; many participants were especially impressed by Judge Colin Mackintosh's account of his experience in presiding over a landmark BitTorrent case and his reasoning in setting a relatively strong penalty against the defendant in that case. Participants also appreciated the discussion on establishing deterrent sentencing, with one Thai participant saying that Thailand was interested in possibly revising its sentencing guidelines as a result of the workshop. Many participants noted that the hypothetical case small group session was a valuable opportunity for them to frankly exchange their views on differing regional norms on IPR enforcement.

Strong Support from Hong Kong Customs

13. (SBU) Hong Kong Customs & Excise Department Commissioner Timothy Tong delivered opening remarks emphasizing Hong Kong's strong IPR record and what he termed to be the well-

placed position of the United States to hold such an event. Drawing from business management principles, Tong said that for an organization to take meaningful action, it must have "VCS": V for value, something worth doing -- which Hong Kong recognizes in pursuing substantial penalties to deter IPR infringers; C for capacity, i.e., resources, which Hong Kong has provided through many enforcement officers as well as the backing for multiple raids and follow-through with regard to locations where infringement takes place; and S for support, which in Hong Kong is unqualified among policy makers across numerous sectors such as trade, tourism, and investment.

¶4. (SBU) Tong made reference to Hong Kong last year handing down the world's first conviction for the use of BitTorrent software to facilitate online video sharing. Digital video uploads subsequently fell by 80 percent. The case is so well known that the perpetrator polled as "the most unfortunate person of the year" in a local newspaper. There is, however, some public sympathy for infringers like this, which is why the HKG has embarked on youth- focused programs to generate greater support from the public to take actions that maintain a high standard of IPR protection here.

¶5. (SBU) CED Intellectual Property Investigation Bureau Senior Superintendent Tam Yiu-keung gave a detailed presentation on Hong Kong's multi-pronged strategy for effective IPR enforcement: enforcement action, legislation, international cooperation, publicity and public education, and a strong partnership with IPR stakeholders. Participants in the workshop were also treated to a tour of CED's advanced anti-internet piracy lab, during which CED officials described the formation of the lab and CED's Computer Forensic Special Interest Group, Computer Analysis

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and Response Team, and Computer Forensic Laboratory. Since 2000, the anti-internet piracy team has processed 57 internet piracy cases and arrested 92 persons involved in online IPR violations.

IPR Overview, Deterrent Sentencing, Cross-Border Issues

¶6. (SBU) U.S. Patent and Trademark Office (USPTO) Attorney Advisor Timothy Browning presented an overview of the current state of IPR protection and discussed the legal framework upon which international IPR protection is based, including a thorough discussion of Trade Related Aspects of Intellectual Property Rights (TRIPs) and TRIPs Plus, which includes the World Intellectual Property Organization's (WIPO) Internet Treaties. U.S. Department of Justice (DOJ) Senior Counsel Andrea Sharrin described the U.S. prosecutorial framework for IPR cases, including the statutory and sentencing framework for IPR crimes.

¶7. (SBU) U.S. DOJ IP Law Enforcement Coordinator for Asia Chris Sonderby discussed the importance of close cross-border communications, especially when considering the complex international nature of recent IPR criminal ventures. In particular, acting against online IPR violations requires coordinated efforts against servers and agents that may be located in several different countries.

Latest Developments in Online IPR Crimes

¶8. (SBU) Representatives from Time-Warner, the Motion Picture Association (MPA), the International Federation of The Phonographic Industry (IFPI), the Business Software Alliance (BSA), and Pfizer discussed current trends in online IP violations and the need for strong deterrent sentences to combat such violations. Pfizer representative Donald Shruhan discussed the prevalence of counterfeit pharmaceuticals being sold through illicit online pharmacies and presented vivid examples of the health dangers involved

in using such pharmaceuticals, including an example in which counterfeit pills were coated with lead-based paint to achieve the look of the genuine product.

19. (SBU) IFPI representative Mayseey Leong discussed the history of peer-to-peer file (P2P) sharing and described the operating concepts behind popular P2P programs such as Bit-Torrent. Since 2001, she continued, music sales in Asia have dropped by 26%, mostly as a result of P2P file sharing. In response, IFPI has recently begun an initiative to aggressively pursue individual online IPR violators. As part of the initiative, IFPI has successfully asked the Hong Kong Judiciary to force internet service providers (ISPs) in Hong Kong to provide individual internet protocol (IP) addresses in civil cases. Through such industry initiatives, aggressive government enforcement actions, and greater public awareness, the overall broadband growth is now far outstripping the spread of internet piracy.

Cunningham